

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

JETSON REED CHESHIER,

Petitioner,

vs.

STATE OF WASHINGTON,
YAKIMA COUNTY, JAMES
HAGGERTY, JOHN CHAMBERS,
STANLEY KOLTARI and A D
ALTHAUS,

Respondents.

NO. 1:14-cv-03130-JLQ

ORDER Re: REPORT AND
RECOMMENDATION AND
DISMISSING PETITION FOR WRIT OF
HABEAS CORPUS

BEFORE THE COURT is Magistrate Judge Hutton's Report and Recommendation. ECF No. 5, to dismiss Mr. Cheshier's *pro se* Petition for Writ of Habeas Corpus, ECF No. 1, by a Person in State Custody pursuant to 28 U.S.C. § 2254. The filing fee has been paid in this action. Petitioner filed timely Objections, ECF No. 7, to the Report and Recommendation. The Court has also considered his Praecipe filed on October 3, 2014, ECF No. 8.

PETITIONER'S OBJECTIONS

Petitioner identifies an "Objection 3" without clearly articulating a first and second objection. Before asserting his third objection, he alleges that federal law has been violated in the damaging, defacing, and removal of a United State Federal Historical Land Mark. ECF No. 7, page 3. He claims that this landmark is a "critical and integral" element of his defense to criminal charges in the Yakima County District Court. He contends that the removal of the landmark has "obscured" his property line

ORDER ADOPTING REPORT AND RECOMMENDATION AND DISMISSING
PETITION -- 1

1 and "given way for falsified land surveys," which he claims are being used to deny him a
2 "lawful defense." *Id.* As part of this "lawful defense," Petitioner asserts that he is a
3 vulnerable adult, and the alleged offenses occurred on his private property, when he was
4 defending his personal property against the use of a backhoe by trespassers.

5 ***Objections 3 & 4:***

6 Petitioner appears to object to the Magistrate Judge's Finding that a petitioner
7 must be challenging the very fact or duration of his confinement in order to utilize the
8 federal habeas statute, 28 U.S.C. § 2254. He contends that he is challenging "the fact"
9 that the removal of the landmark denies him an "essential element" of his defense to the
10 current Yakima County District Court Charges. ECF No. 7, pages 4-5.

11 In his "Objection 4," Petitioner objects to the Finding that the Court lacks subject
12 matter jurisdiction because Petitioner is not "in custody." He contends that "[a]ny form
13 of 'restraint' or 'limitation of liberty' is 'in custody'." ECF No. 7, page 5. He asserts that
14 the "commission of [] Federal felonies is interfering with [his] Rights to 'Defense
15 elements' and denying [him] a fair trial." ECF No. 7, page 5. He also appears to be
16 asking the court to remove his state criminal proceedings to federal court.

17 Federal courts have jurisdiction to entertain an application for writ of habeas
18 corpus on behalf of a person who is "in custody" pursuant to a judgment of a state court
19 on the ground that the person is in custody in violation of the Constitution, laws, or
20 treaties of the United States. 28 U.S.C. § 2254. Petitioner does not present facts showing
21 that he is in custody pursuant to a state court judgment. Rather, he is asking this court to
22 intervene to prevent the possibility of such a judgment.

23 Federal courts have broadly construed the term "in custody" to include periods of
24 probation, parole and supervised release. *See United States v. Spawr Optical Research,*
25 *Inc.*, 864 F.2d 1467, 1470 (9th Cir.1988), *cert. denied*, 493 U.S. 809 (1989)(probation
26 satisfies section 2254's "in custody" requirement.) Parole may satisfy the custody
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1 requirement because "parole restrictions significantly restrain petitioner's liberty to do
2 those things which in this country free men are entitled to do." *Dow v. Circuit Court of*
3 *the First Circuit*, 995 F.2d 922, 923 (9th Cir. 1993), *cert. denied*, 114 S.Ct. 1051
4 (1994)(quoting *Jones v. Cunningham*, 371 U.S. 236, 239-40 (1963)). The rationale
5 behind such holdings is "the possibility that probation or parole will be revoked and the
6 individual will be incarcerated for the remainder of the sentence is ever imminent."
7 *Jones v. Cunningham*, 371 U.S. at 242.

8 A petitioner who is released on his own recognizance pending appeal is also "in
9 custody." *Hensley v. Municipal Court*, 411 U.S. 345, 348-49 (1973)(petitioner was
10 subject to arrest for failure to appear at all times and places as ordered); *Justices of*
11 *Boston Municipal Court v. Lydon*, 466 U.S. 294, 300-02 (1984)(release on recognizance
12 pending retrial); *Lefkowitz v. Mewsome*, 420 U.S. 283, 286 (1975) (release on bail
13 pending appeal). The Court in *Hensley* observed:

14 "The custody requirement of the habeas corpus statute is designed to
15 preserve the writ of habeas corpus as a remedy for severe restraints on
16 individual liberty. Since habeas corpus is an extraordinary remedy whose
17 operation is to a large extent uninhibited by traditional rules of finality and
federalism, its use has been limited to cases of special urgency, leaving
more conventional remedies for cases in which the restraints on liberty are
neither severe nor immediate."

18 411 U.S., at 351.

19 Petitioner does not state that he is on parole, probation, or supervised release from
20 a state court judgment. He does not allege that he has been released pending an appeal
21 of such judgment. Neither Petitioner's request for a stay of his state criminal
22 proceedings, nor his request for removal of his case to federal court is a matter within
23 this court's jurisdiction. *See Younger v. Harris*, 401 U.S. 37, 45-46 (1971)(holding that
24 federal courts must abstain from enjoining currently pending state criminal actions);
25 *Johnson v. Mississippi*, 421 U.S. 213, 220 (1975)(stating that removal petitioner must
26 allege violation of federal law explicitly protecting equal racial civil rights).

1 Furthermore, issues regarding land disputes are quintessentially matters reserved for
2 state courts. *See Shoshone Mining Co. v. Rutter*, 177 U.S. 505, 507-08 (1900).

3 Petitioner is neither challenging the fact or duration of present confinement
4 pursuant to a state court judgment, nor seeking his release. Therefore, this court has no
5 jurisdiction to consider this habeas matter. *See Preiser v. Rodriguez*, 411 U.S. 475-487-
6 90 (1973).

7 ***Additional Objections:***

8 Petitioner also appears to challenge the standard “Objections” language that
9 written objections be served on all parties. Because Respondents were not served with
10 the Petition and are not parties to this action, there was no requirement that Petitioner
11 serve his Objections on Respondents. This objection does not bear on whether this
12 Court’s has jurisdiction to consider Mr. Cheshier’s habeas Petition.

13 Petitioner claims that his Petition is not frivolous and that unidentified federal
14 agents have viciously assaulted him, attempted to murder him, and removed a federal
15 historical landmark. If Petitioner wishes to pursue a claim of alleged unconstitutional
16 conduct by federal agents, he may file a separate civil rights complaint in a separate
17 action. Only a federal grand jury or United States attorney may initiate federal criminal
18 charges. A Petition For Writ of Habeas Corpus is not the appropriate manner in which
19 to pursue such claims.

20 Petitioner appears to assert that in October 2012, federal agents who allegedly
21 assaulted and attempted to murder him were “sent by Federal Magistrate Hutton.”
22 Petitioner further seeks to have Magistrate Judge Hutton recused from this action
23 because the Judge failed to serve the Petition upon Respondents or to acquire written
24 consent of all parties to have the Magistrate Judge hear all matters.

25 Court records show no federal proceedings against Mr. Cheshier in 2012, and
26 Petitioner has asserted no facts to substantiate his bald assertions against Magistrate
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1 Judge Hutton. Petitioner has presented no affidavit of facts which would make a
2 reasonable person question Magistrate Judge Hutton's impartiality in this habeas matter.
3 The Court finds no basis which would warrant the recusal of Magistrate Judge Hutton
4 from this action under 28 U.S.C. §§ 144 or 455.

5 After review of the record and liberally construing the assertions in the light most
6 favorable to Mr. Cheshier, the Court finds that his Objections lack substance and are
7 without merit. **IT IS ORDERED** the Report and Recommendation, ECF No. 5, is
8 **ADOPTED in its entirety** and the Petition For Writ of Habeas Corpus,
9 ECF No.1, shall be **DISMISSED without prejudice** for lack of jurisdiction.

10 **IT IS SO ORDERED.** The District Court Executive is directed to enter this
11 Order, enter judgment of dismissal of the Petition For Writ of Habeas Corpus. without
12 prejudice, forward a copy to Petitioner, and close the file. The Court further certifies that
13 there is no basis upon which to issue a certificate of appealability. 28 U.S.C. § 2253©;
14 Fed. R.App. P. 22(b).

15 **DATED** this 20th day of October 2014.

16 s/ Justin L. Quackenbush
17 JUSTIN L. QUACKENBUSH
18 SENIOR UNITED STATES DISTRICT JUDGE
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